



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2019-0683]**

**RIN 1625-AA00**

**Safety Zone; Spaceport Sheboygan Corporate Rocket Challenge, Sheboygan Harbor, Sheboygan, WI**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a safety zone for certain waters of the Sheboygan Harbor and Lake Michigan. This action is necessary to provide for the safety of life on these navigable waters near Sheboygan, WI during a rocket launch event on September 28, 2019. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Lake Michigan or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2019-0683 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Chief Petty Officer Kyle Weitzell, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414-747-7148, email Kyle.W.Weitzell@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

|        |                                 |
|--------|---------------------------------|
| CFR    | Code of Federal Regulations     |
| DHS    | Department of Homeland Security |
| FR     | <b>Federal Register</b>         |
| NPRM   | Notice of proposed rulemaking   |
| §      | Section                         |
| U.S.C. | United States Code              |

**II. Background, Purpose, and Legal Basis**

The Great Lakes Aerospace Science and Education Center notified the Coast Guard that it will be conducting a rocket launch event from 9 a.m. through 12 noon on September 28, 2019. The rocket is to be launched from shore at the Sheboygan South Pier. Hazards from rocket launches over the water include accidental discharge of the ignition system, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Lake Michigan (COTP) has determined that potential hazards associated with the rockets to be used in this event would be a safety concern for anyone within a 1,500-yard radius of the rocket launch site.

The purpose of this rulemaking is to protect the safety of vessels and the navigable waters within a 1,500-yard radius of the Sheboygan South Pier launch site located at coordinates 43°44.914'N, 087°41.869'W before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### **III. Discussion of Proposed Rule**

The COTP is proposing to establish a safety zone from 9 a.m. through 4 p.m. on September 28, 2019. The safety zone would cover all navigable waters within 1,500 yards of the Sheboygan South Pier launch site located at coordinates 43°44.914'N, 087°41.869'W near Sheboygan, WI. The duration of the zone is intended to protect the safety of vessels and these navigable waters before, during, and after the scheduled 9 a.m. through 12 noon rocket launch event. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This Notice of Proposed Rulemaking (NPRM) has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size and duration of this action. The safety zone created by this rule will be relatively small and is designed to minimize its impact on navigable waters. This rule will prohibit entry into an area of the Sheboygan Harbor and Lake Michigan in Sheboygan, WI that is within 1,500 yards of the Sheboygan South Pier launch site located at coordinates 43°44.914'N, 087°41.869'W during the rocket launch event, not to exceed seven hours in duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the COTP.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies

and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting no more than seven hours that would prohibit entry within 1,500 yards of a rocket launch site. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A preliminary Record of Environmental Consideration supporting this determination will be available in the docket where indicated under **ADDRESSES** once it is completed. We seek any comments or information that may

lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be

viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

### **PART 165: REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1

2. Add § 165.T09-0683 to read as follows:

#### **§ 165.T09-0683 Safety Zone; Spaceport Sheboygan Corporate Rocket Challenge, Sheboygan Harbor, Sheboygan, WI.**

(a) *Location.* All navigable waters of the Sheboygan Harbor and Lake Michigan near Sheboygan, WI within 1,500 yards of the Sheboygan South Pier rocket launch site located at coordinates 43°44.914'N, 087°41.869'W

(b) *Enforcement Period.* This rule will be enforced from 9 a.m. through 4 p.m. on September 28, 2019.

(c) *Regulations.* (1) In accordance with the general regulations in section § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless



authorized by the Captain of the Port Lake Michigan (COTP) or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated on-scene representative.

(3) The “on-scene representative” of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on his or her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or an on-scene representative to obtain permission to do so. The COTP or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or an on-scene representative.

Dated: August 21, 2019.

T. J. STUHLREYER,  
CAPTAIN, U.S. Coast Guard,  
Captain of the Port Lake Michigan.

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